U.S. Web, Inc. and James Radosta. Case 29–CA–20063

November 20, 1998 DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND BRAME

On September 18, 1997, Administrative Law Judge Raymond P. Green issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel and the Charging Party each filed briefs in support of the judge's decision.

On June 17, 1998, the Board issued an order remanding the proceeding to the judge for additional credibility resolutions on certain testimony that he failed to address in his decision and for further analysis on the credited facts regarding whether the Respondent violated the Act as alleged in the complaint. On August 3, 1998, the judge issued the attached supplemental decision. The Respondent filed exceptions and a supporting brief, and the Charging Party filed a brief in support of the judge's supplemental decision.

The Board has considered the decisions in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, ¹ and conclusions² and to adopt the recommended Order.

¹ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

² In adopting the judge's finding that the Respondent's owner, John Busa, coercively interrogated Charging Party Radosta, we stress that Busa's questioning of Radosta about organizing the shop occurred in the presence of other employees and effectively served as a harbinger of Radosta's unlawful discharge the following month. We agree with the judge that, given Radosta's eventual fate, the employees who were present during this incident were not likely to miss Busa's not too subtle message that the Respondent would retaliate against employees suspected of union activities.

Contrary to his colleagues and the judge, Member Brame concludes that the Respondent did not violate Sec. 8(a)(1) of the Act by Busa's alleged interrogation of Radosta. In April 1996, Busa asked Radosta, in the presence of other employees, if Radosta had been talking to Union Representative Calderone. Busa said that he had just received a phone call from Calderone, who mistakenly thought Busa was a unit employee and solicited him to sign a card. As interrogation is not per se unlawful, "[t]o fall within the ambit of § 8(a)(1), either the words themselves or the context in which they are used must suggest an element of coercion or interference." Midwest Stock Exchange v. NLRB, 635 F.2d 1255 (7th Cir. 1980), cited by the Board with approval in Rossmore House, 269 NLRB 1176, 1177 (1984), affd. sub. nom. Hotel Employees Local 11 v. NLRB, 760 F.2d 1006 (9th Cir. 1985) (traditional test is "whether under all of the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act"); see Bourne v. NLRB, 332 F.2d 47 (2d Cir. 1964) (relevant criteria include history of employer, hostility, nature of information sought, identity of questioner, place and method of interrogation, truthfulness of reply). In this case, Radosta was known by the Respondent to be a union adherent and Busa questioned him about the possible resumption of union activities in a joking manner that was free of any threats or

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, U.S. Web, Inc., Huntington, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Kevin Kitchen, Esq., for the General Counsel. Clifford S. Bart, Esq., for the Respondent. Stuart Lichten, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

RAYMOND P. GREEN, Administrative Law Judge. This case was tried in Brooklyn, New York, on June 5 and 6 and July 8, 1997. The charge was filed on June 13, 1996, and the complaint was issued on September 20, 1996. In pertinent part, the complaint alleges that (a) in or about early May 1996, the Respondent by its owner, John Busa, interrogated employees about their sympathies for Local 1, Amalgamated Lithographers of America, and (b) discharged James Redosta for discriminatory reasons.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

FINDINGS OF FACT I. JURISDICTION

The Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE ALLEGED VIOLATIONS

The Respondent is in the printing business and its specialty is magazine and direct mail inserts. This is, according to Busa, a high volume type of printing operation. During the entirety of its operation, the employees of the Company have not been represented by any union.

Busa is the Company's founder, owner, and president. At the time of the events here, Craig Stoller was in charge of the printing operations and Richard Rahmer was a foreman. Because of the Company's growth, Richard Azzoli was hired in January 1996 as the general manager to bring standard business practices to the Company's operations. At the time of the hearing, the Company employed over 200 employees.

Redosta was hired by the Company on October 1, 1991, as a four color process stripper. This is a craft job that requires a great deal of skill and experience. At the same time, it should be noted that this type of skill is becoming less and less used in the printing industry as computers are increasingly being introduced which enable people with lesser skills to do the same functions. This was acknowledged by Redosta, who has taken courses to familiarize himself with computer skills relevant to the printing industry. The evidence shows that the number of

promises, or coercion. Although the judge ultimately found unlawful interrogation here based on the Respondent's discriminatory termination of Busa 6 weeks later, Member Brame does not find that this brief and isolated conversation remained so fresh in employees' minds for that length of time that they would conclude, in the judge's words, that "interrogation may soon be followed by retaliation." Accordingly, he would dismiss this allegation of the complaint.

stripper jobs at the Company has gone down and will continue to go down in the future.

According to Redosta, in the spring of 1993, he contacted Joe Calderone, a representative of Local 1, Amalgamated Lithographers of America, and thereafter solicited other employees to sign union authorization cards.

On September 17, 1993, Local 1 filed a petition in Case 29–RC–8222 seeking an election in a unit of the Company's lithographic production employees. On December 2, 1993, an election was held and the Union lost. As no objections were filed, the results of the election were certified in mid-December 1993.

Redosta continued to work after the election until March 1994 when he was discharged. On April 21, 1994, the Union filed a charge alleging his discharge as an unfair labor practice and this was amended on June 15, 1994. A complaint based on that charge was issued by the Regional Director on July 27, 1994, and alleged among other things that the Respondent discriminatorily laid off Redosta. Subsequently, the complaint was withdrawn after Redosta was offered reemployment.

I have no intention of relitigating the events that took place and that were the basis on which the Regional Office issued the prior complaint in Case 29–CA–18163. And although the fact that the complaint was issued is relevant to this case, I make no findings or conclusions as to whether the allegations of that complaint had merit. I note that the Respondent denied the allegations thereof and asserted that Redosta had been discharged for cause.

With respect to Redosta's union activity, the Company asserts that it had no knowledge of such activity either in connection with the prior case or with respect to the present case. And although Redosta asserted that he was actively involved in campaigning for Local 1, both in 1993 and more recently in 1996, there was no corroborating evidence to support this assertion.

In any event, in October 1994, Redosta received a phone call from Busa who asked if he would return to work. Redosta agreed and on October 28. he began to work on the night shift. He went back to work as a stripper and did the same kind of work that he did before.

In connection with the recall of Redosta, Busa testified that he rehired him over the objection of Supervisor Craig Stoller and did so, after discussions with counsel, in an effort to cut off any potential backpay liability.

One other point has to be made before we come to the events that led to Redosta's second discharge on May 31, 1996. And that is that Stoller and Redosta have not gotten along since 1992; long before any union ever appeared on the scene. In this regard, the evidence shows that Redosta found it difficult to take direction from Stoller who was promoted over him, but who did not come from a "stripper background." This was acknowledged by Redosta, who testified that he didn't get along with Stoller and that their philosophies about printing were different. Redosta stated that he felt that Stoller's approach to prep work was not correct and that he told him so. He conceded that he sometimes would not follow the directions laid down by Stoller unless Stoller made an issue of it. Similarly, Dale Hunt, a former employee in the stripping department, testified that although Redosta was, in his opinion, an excellent stripper, he had problems with Stoller which preceded the union activities. In Hunt's opinion, the problems between Redosta and Stoller were long standing and were not related to the Union.

Redosta testified that at some point in December 1995 (more than a year after his return to work) Union Representative Calderone called him and said that the Union wanted his assistance to make another attempt at organizing the employees. Redosta asserts that he agreed, and that he supplied Calderone with a list of the current employees.

According to Redosta, in April 1996, Busa came into the prep department and asked him in the presence of other workers if Redosta had been talking to Calderone about organizing the shop. Redosta states that when he said no, Busa said that Calderone must have a screwed up list because he had just received a call from Calderone who asked him to sign a union card. This is essentially corroborated by Hunt. About a month later, on May 31, 1996, Redosta was discharged.

Busa originally testified that it was in October 1994 that he received a phone call from Calderone who asked him to sign a card and that he told some of the employees in the shop about this event. Busa testified that he thought this was funny and that he laughed about it when he related the conversation to some of the employees. (In fact, it is sort of funny unless you happened to be Redosta.)

Nevertheless, when pressed as to when this conversation occurred, Busa finally acknowledged that the telephone call from Calderone occurred in the spring of 1996 and before he decided to approve the decision to discharge Redosta. Notwithstanding the someone (sic) unusual nature of this conversation, Busa could only place it as occurring sometime between January and May 1996.

Obviously the timing of the phone conversation between Busa and Calderone is important and it is my conclusion that it took place in April 1996 as testified to by Redosta and Hunt. If the phone call had been made in 1994, as initially asserted by Busa, its relationship and possible connection to Redosta's discharge would be pretty remote. However, if it occurred in April 1996, this is quite another matter. As I conclude that Busa spoke to Calderone in April 1996, the General Counsel has shown primae facie, a connection between Busa's knowledge of the union organizing activity; his suspicion that Redosta was involved, and ultimately the discharge of Redosta which occurred a relatively short time thereafter.

The Respondent argued that Redosta and Stoller had not gotten along for many years; that Stoller objected to Redosta being rehired in 1994, and that at various times thereafter he tried to convince Busa to discharge him. According to the Respondent, Stoller's objections to Redosta were (a) that his work was too slow and (b) that he ignored procedures established by Stoller for the prep department. As to the latter, Redosta is accused of failing to follow and enter the proper codes whereby those on the next shift can pick up and continue his work. He is also accused of refusing to use a certain template procedure which was initiated by Stoller which he insisted that Redosta use in preference to Redosta's own and more traditional way of using a T-square. Busa testified that from the time of Redosta's rehire, he refused to accede to Stoller's discharge recommendations essentially because he wanted to avoid another lawsuit. Busa claims that he finally and reluctantly gave in, in May 1996, after his general manager, Azzoli, and supervisors, Stoller and Rahmer, convinced him that Redosta was doing a poor job. According to Busa, Stoller brought him some records to show that Redosta was working too slowly. He states that this occurred about a week before Redosta was discharged. (And therefore, after the phone conversation between Busa and Union Representative Calderone.)

Richard Rahmer testified that when Redosta came back to work in October 1994, Redosta was put on the night shift and worked under his supervision until mid-1995. Rahmer testified that he agreed with Stoller's desire to fire Redosta. Rahmer stated that Redosta took longer on jobs than anyone else and that when he talked to Redosta about this, Redosta disputed the assertion. He also testified that Redosta wanted to continue to use a T-square for layout work and didn't want to use Stoller's new grid procedure which used templates. Although Redosta conceded that he preferred to use his T-square, Rahmer acknowledged that Redosta finally came around to using the new grid system. Rahmer also testified that when Redosta first came back to work, he used an old fashioned code for jobs which made for confusion for the people down the line. According to Rahmer, Redosta was reluctant to change but that he did change after about a month.

In September 1995, Redosta was moved to the day shift which was supervised by Foreman Tom Pasaloqua. There is no evidence that Pasaloqua had any complaints about Redosta's work, either as to the way he was following procedures or with his production pace.

My sense of Rahmer's testimony was that although he felt that Redosta continued to be a slow worker as compared to other strippers, the problems with the templates and the codes were fixed within a reasonably short period time after he returned to work. Thus, during a substantial period of time before Redosta's discharge, it seems that there was no problem with his following the required procedures. And if his work was slow (an assertion denied by Redosta) this was no different than how he always worked and there is nothing in writing to show that this was a problem as far as the Company was concerned. That is, Redosta *never* received any written warnings about his production and there is no documentation in his personnel file to indicate that his rate of production was an issue.

In an attempt to prove that his work was slow, the Respondent introduced some production records representing a total of seven jobs that Redosta worked on during the period from January to May 1997. As Redosta worked on between 30 to 40 jobs per week, or over 700 jobs during this period of time, the proffered records, which were culled by the Respondent, were not, in my opinion, sufficiently representative of Redosta's work. Moreover, these records are not particularly persuasive. At least two of the jobs (jobs 9618949 and 9619119) were done in the same or less time than comparable jobs worked on by other employees and Redosta had reasonable explanations as to why some of the other cited jobs, took more time. For example, job 9619193 was a two-sided instead of a one-sided job.

As noted above, there was nothing in Redosta's personnel file that would indicate that the Respondent was unduly concerned about his production rate at any time during his employment. If he worked slowly (and this is denied by him) his work seems to have been no different than what it had been from the start. In this regard, I note that the evidence shows that there was another employee, Eli Negron, whose evaluations, unlike those of Redosta's, specifically indicated that Ne-

gron had a problem with productivity. And yet he remained employed by the Company.

In my opinion, if productivity became a real issue insofar as Redosta, it became one after Calderone had the telephone conversation with Busa. It is my opinion that what had been a non-problem before, was now investigated in an attempt to "prove" that Redosta's productivity was low and that there was a good "nondiscriminatory" reason for getting rid of him.

In my opinion, had it not been for the phone call from Calderone, Redosta, who at that time was following company procedures, would not have been discharged. As such, I conclude that his discharge was motivated by antiunion considerations and therefore constituted a violation of Section 8(a)(3) of the Act. I also conclude, based on Redosta's credited testimony, that when Busa came into the prep department and asked if Redosta had been talking to Calderone about organizing the shop, that this constituted unlawful interrogation within the meaning of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

- 1. By discharging James Redosta, the Respondent, U.S. Web, Inc., violated Section 8(a)(1) and (3) of the Act.
- 2. By interrogating Redosta about his union activities, the Respondent has violated Section 8(a)(1) of the Act.
- 3. By the aforesaid conduct the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent, having discriminatorily discharged an employee, must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, U.S. Web, Inc., Huntington, New York, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Discharging or otherwise discriminating against any employee for joining or engaging in activity on behalf of Local 1, Amalgamated Lithographers of America, or any other labor organization.
- (b) Interrogating employees about their union sympathies and membership.
- (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹ Redosta did receive two warnings regarding mistakes—one on July 19, 1995, and the other on March 18, 1996. These did not, however, involve any productivity issues.

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) Within 14 days from the date of this Order, offer James Redosta, full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision
- (b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.
- (c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.
- (d) Within 14 days after service by the Region, post at its facility in Huntington, New York, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 14, 1996.
- (e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities

WE WILL NOT discharge or otherwise discriminate against any of you for joining or supporting Local 1, Amalgamated Lithographers of America.

WE WILL NOT interrogate our employees about their union sympathies, activities, or membership.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer James Redosta, full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and WE WILL make him whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of James Redosta and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that any such references will not be used against him in any way.

U.S. WEB, INC.

Kevin Kitchen, Esq., for the General Counsel. Clifford S. Bart, Esq., for the Respondent. Stuart Lichten, Esq., for the Charging Party.

SUPPLEMENTAL DECISION

I issued a decision in this case on September 18, 1997, finding that the Respondent violated Section 8(a)(1) and (3) of the Act by coercively interrogating James Radosta about his union activities and by discharging him for discriminatory reasons.

On June 17, 1998, the Board remanded this matter to me to make further findings of fact and conclusions of law. After reviewing again the record in this matter, I make the following findings:

1. In April 1996, the Respondent's owner, John Busa, came into the prep department, and directing his comments to James Radosta, asked him, in the presence of other employees, if Radosta had been talking to Union Representative Calderone about organizing the shop. Busa said that he had just received a phone call from Calderone who, mistaking him for an employee, asked Busa if he was interested in signing a union card. This transaction, as testified to by Radosta, was credibly corroborated by employee Dale Hunt. While the evidence shows that Busa asked Radosta this question in a joking manner, I do not credit the testimony of Busa and Christopher Bagliore that Busa did not direct the question toward Radosta or that Busa did not specifically ask Radosta if he had been talking to a union agent. In evaluating credibility, I noted in the original decision that Busa initially testified that this transaction took place in 1994, which if true, would have substantially diminished its importance. But when pressed as to when this occurred, Busa finally admitted that the event occurred at or about the time related by Radosta and Hunt and therefore shortly before the decision was made to discharge Radosta. In this regard, Busa's changed testimony as to the timing of the event, not only

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

¹ On the whole, I found Radosta to be a credible witness. I thought he was straightforward in his testimony and I was impressed with his demeanor.

tended to diminish his credibility but also tended to bolster the General Counsel's case in that it showed that the decision to discharge Radosta took place soon after Busa became aware that the Union was again attempting to organize his employees.

- 2. Whether or not Busa was aware of Radosta's union activity in 1993 regarding the election held in December of that year, it is clear that by the summer of 1994 he could not avoid the conclusion that Radosta was a union supporter. Thus, on July 27, 1994, the Regional Director had issued a complaint alleging that Radosta's earlier layoff was motivated by his union activity. Irrespective of the merits of that complaint, any reasonable person receiving the complaint, would be forced to opine that Radosta was a union supporter. Thus, when Busa, in April 1996, received the phone call from Union Representative Calderone, it is more than probable that his first thoughts must have turned to Radosta, whom Busa had previously reinstated after receiving the prior unfair labor practice complaint.
- 3. I credit the testimony of Radosta that in or about April 1995, he had a conversation with Busa wherein he told Busa that he would drop his charges against the Company and where Busa asked if he (Radosta) would be involved with the Union again.
- 4. The evidence shows that in September 1995, Radosta was moved to the day shift, under the supervision of Tom Pasaloqua, after having worked for a period of time on the night shift under Supervisor Richard Rahmer. Any testimony by Rahmer to the effect that Radosta was transferred from the night shift because Rahmer no longer wanted him on the night shift and that Rahmer complained to other supervisors about work that Radosta passed on to the night shift after his transfer, is viewed by me as being unreliable. As I pointed out in my initial decision, Radosta agrees that for a period of time when he started to work with Rahmer in October 1994, there was a difficulty as they disagreed as to how Radosta should perform his work. (Radosta insisted on using a T-square and also was reluctant to change his use of certain codes.) Nevertheless, Rahmer conceded that Radosta came around to using the new grid system and therefore this no longer became a bone of contention between these two people. Rahmer also testified that Radosta changed his habit of using old fashioned codes which had tended to make for confusion for the people who worked on Radosta's jobs after he completed his work on them. Rahmer's testimony was that although Radosta was, at first, reluctant to change, he did change after about a month on the job; thus, sometime in November 1994.
- 5. The Respondent asserted that the hiring of Richard Azzoli as general manager played a large and nondiscriminatory role in the decision to discharge Radosta. Essentially, it is asserted that Azzoli was concerned with productivity and that he pushed for the discharge of Radosta when he became convinced that Radosta was a slow and unproductive worker. I simply do not believe that this is the case. Radosta credibly challenged the evidence produced by the Respondent that he was slower than his colleagues and the documentary evidence produced by the Respondent was not viewed by me as being particularly representative or persuasive. The record convinced me that Radosta was working at a rate that was unchanged since his rehiring in

1994 and that no issue was made of his productivity until after Busa received the phone call from Union Representative Calderone, in April 1996. Thus, the record shows that Radosta, whom the Respondent claims was fired in large part because of his low productivity, received *no* warnings or reprimands regarding his productivity, whereas another employee, Eli Negron, received a comment on his evaluation regarding poor productivity and retained his job. (Radosta's evaluation had no mention of any alleged poor productivity.)

- 6. I credit Radosta's testimony that at the time of his discharge, he was told by Stoller that he was being let go because work was slow.
- 7. In my opinion, the General Counsel has made out a primae facie case under the test of Wright Line, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982). The General Counsel has shown credible evidence that Radosta was involved in union activity in 1993 and resumed his union activity in 1996. As a complaint, previously issued against the Respondent (and settled) ad alleged that the Respondent had laid off Radosta because of his union activity, it is reasonable to conclude that Busa must have reached the opinion that Radosta was involved in union activity. The evidence shows that in April 1996 (and not in 1994) Busa received a phone call from Union Agent Calderone which indicated to him that union activity was resuming at his company. As a consequence of this phone call, Busa no doubt was reminded of Radosta's former union activity and went out into the shop and asked Radosta if he had been talking to Calderone about organizing the shop. I am convinced that it was only after the phone call from Calderone that the Company began an effort to attempt to document Radosta's alleged inefficiency and that this was done to provide a pretext for his discharge. The assertions that Radosta was not following company procedures was effectively negated by the testimony of Rahmer who stated that his differences with Radosta regarding methods had been corrected by about November 1994.2
- 8. All witnesses agreed that when Busa mentioned his phone conversation with Calderone, he did so in a joking manner. And had this case involved only this one incident, I would recommend that the interrogation allegation be dismissed either as being noncoercive or de minimus. However, as it was soon followed by the unlawful discharge of Radosta, it is my opinion that the interrogation must also be viewed as being coercive as other employees could reasonably come to the conclusion that interrogation may soon be followed by retaliation. *Rossmore House*, 269 NLRB 1176 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985)

In conclusion, I reaffirm my earlier decision for the reasons stated therein and for the reasons set forth in this Supplemental Decision.

² Had Radosta been discharged in October 1994, at a time when he disregarded supervisory instructions, such discharge would clearly have been justified. And if Radosta is reinstated, he should keep in mind that it his responsibility to follow the directions and orders of his supervisors.